

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 571

Introduced by Kruse, 13; Cornett, 45; Schimek, 27

Read first time January 17, 2007

Committee: Judiciary

A BILL

1 FOR AN ACT relating to adoption; to amend sections 43-101,
2 43-104.08, 43-104.13, 43-104.15, 43-104.18, 43-104.19,
3 and 43-111, Reissue Revised Statutes of Nebraska; to
4 provide for adoption by two adult persons jointly;
5 to harmonize provisions; and to repeal the original
6 sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-101, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 43-101 (1) Except as otherwise provided in the Nebraska
4 Indian Child Welfare Act, any minor child may be adopted by any
5 adult person or ~~persons~~ and any adult child may be adopted by the
6 ~~spouse of such child's parent in the cases and subject to sections~~
7 ~~43-101 to 43-115,~~ except that no two persons jointly, regardless
8 of their marital status, subject to sections 43-101 to 43-115. Any
9 parent of a minor child may consent to the adoption of the minor
10 child by the parent's spouse or by another adult who will share
11 parental responsibility for the child with such parent, without the
12 parent having to relinquish his or her legal rights to the child.
13 No person having a husband or wife may adopt a minor child unless
14 the husband or wife joins in the petition therefor, in which case
15 ~~- If the husband or wife so joins in the petition therefor,~~ the
16 adoption shall be by them jointly. - ~~except that an adult husband~~
17 ~~or wife may adopt a child of the other spouse whether born in or~~
18 ~~out of wedlock.~~

19 (2) Any adult child may be adopted by any person or two
20 persons jointly subject to sections 43-101 to 43-115, except that
21 no person having a husband or wife may adopt an adult child unless
22 the husband or wife joins in the petition therefor. If the husband
23 or wife so joins the petition therefor, the adoption shall be
24 by them jointly. The adoption of an adult child by another adult
25 or adults who are not the stepparent of the adult child may be

1 permitted if the adult child has had a parent-child relationship
2 with the prospective parent or parents for a period of at least
3 six months next preceding the adult child's age of majority and (a)
4 the adult child has no living parents, (b) the adult child's parent
5 or parents had been deprived of parental rights to such child by
6 the order of any court of competent jurisdiction, (c) the parent or
7 parents, if living, have relinquished the adult child for adoption
8 by a written instrument, (d) the parent or parents had abandoned
9 the child for at least six months next preceding the adult child's
10 age of majority, or (e) the parent or parents are incapable of
11 consenting. The substitute consent provisions of section 43-105 do
12 not apply to adoptions under this subsection.

13 Sec. 2. Section 43-104.08, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 43-104.08 Whenever a child is claimed to be born out of
16 wedlock and the biological mother contacts an adoption agency or
17 attorney to relinquish her rights to the child, or the biological
18 mother joins in a petition for adoption to be filed by ~~her~~
19 ~~husband~~, another adult person, the agency or attorney contacted
20 shall attempt to establish the identity of the biological father
21 and further attempt to inform the biological father of his right
22 to execute a relinquishment and consent to adoption, or a denial
23 of paternity and waiver of rights, in the form mandated by section
24 43-106, pursuant to sections 43-104.08 to 43-104.24.

25 Sec. 3. Section 43-104.13, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 43-104.13 The notice sent by the agency or attorney
3 pursuant to section 43-104.12 shall be served sufficiently in
4 advance of the birth of the child, whenever possible, to allow
5 compliance with section 43-104.02 and shall state:

6 (1) The biological mother's name, the fact that she is
7 pregnant or has given birth to the child, and the expected or
8 actual date of delivery;

9 (2) That the child has been relinquished by the
10 biological mother, that she intends to execute a relinquishment,
11 or that the biological mother has joined or plans to join in a
12 petition for adoption to be filed by ~~her husband,~~ another adult
13 person;

14 (3) That the person being notified has been identified as
15 a possible biological father of the child;

16 (4) That the possible biological father may have certain
17 rights with respect to such child if he is in fact the biological
18 father;

19 (5) That the possible biological father has the right to
20 (a) deny paternity, (b) waive any parental rights he may have, (c)
21 relinquish and consent to adoption of the child, or (d) file a
22 notice of intent to claim paternity and obtain custody of the child
23 pursuant to section 43-104.02;

24 (6) That to deny paternity, to waive his parental rights,
25 or to relinquish and consent to the adoption, the biological

1 father must contact the undersigned agency or attorney representing
2 the biological mother, and that if he wishes to seek custody
3 of the child he should seek legal counsel from his own attorney
4 immediately; and

5 (7) That if he is the biological father and if the child
6 is not relinquished for adoption, he has a duty to contribute to
7 the support and education of the child and to the pregnancy-related
8 expenses of the mother and a right to seek visitation.

9 The agency or attorney representing the biological mother
10 may enclose with the notice a document which is an admission
11 or denial of paternity and a waiver of rights by the biological
12 father, which the biological father may choose to complete, in
13 the form mandated by section 43-106, and return to the agency or
14 attorney.

15 Sec. 4. Section 43-104.15, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 43-104.15 The notification procedure set forth in
18 sections 43-104.12 to 43-104.14 shall, whenever possible, be
19 completed prior to a child being placed in an adoptive home.
20 If the information provided in the biological mother's affidavit
21 prepared pursuant to section 43-104.09 presents clear evidence that
22 providing notice to a biological father or possible biological
23 father as contemplated in sections 43-104.12 to 43-104.14 would be
24 likely to threaten the safety of the biological mother or the child
25 or that conception was the result of sexual assault or incest,

1 notice is not required to be given. If the biological father or
2 possible biological fathers are not given actual or constructive
3 notice prior to the time of placement, the agency or attorney shall
4 give the adoptive parent or parents a statement of legal risk
5 indicating the legal status of the biological father's parental
6 rights as of the time of placement, and the adoptive parent or
7 parents shall sign a statement of legal risk acknowledging their
8 acceptance of the placement, notwithstanding the legal risk.

9 Sec. 5. Section 43-104.18, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 43-104.18 If a petition to finalize an adoption is
12 filed and fails to establish substantial compliance with sections
13 43-104.08 to 43-104.16, the court shall receive evidence by
14 affidavit of the facts and circumstances of the biological mother's
15 relationship with the biological father or possible biological
16 fathers at the time of conception of the child and at the time
17 of the biological mother's relinquishment or consent to adoption
18 of the child, including any evidence that providing notice to
19 a biological father would be likely to threaten the safety of
20 the biological mother or the child or that the conception was
21 the result of sexual assault or incest. If, under the facts
22 and circumstances presented, the court finds that the agency or
23 attorney representing the biological mother did not exercise due
24 diligence in complying with sections 43-104.08 to 43-104.16, or if
25 the court finds that there is no credible evidence that providing

1 notice to a biological father would be likely to threaten the
2 safety of the biological mother or the child or that the conception
3 was the result of sexual assault or incest, the court shall order
4 the attorney or agency to exercise due diligence in complying with
5 sections 43-104.08 to 43-104.16. If the attorney or agency fails to
6 exercise due diligence in complying with such sections or at any
7 time upon the petition or application of any interested party the
8 court may appoint a guardian ad litem to represent the interests of
9 the biological father. The guardian ad litem shall be chosen from
10 a qualified pool of local attorneys. The guardian ad litem shall
11 receive reasonable compensation for the representation, the amount
12 to be determined at the discretion of the court.

13 Sec. 6. Section 43-104.19, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 43-104.19 The guardian ad litem for the biological father
16 shall:

17 (1) Identify the biological father whenever possible;

18 (2) Notify the biological father or possible biological
19 fathers of the proposed relinquishment or adoption of the child
20 and inform the biological father or possible biological fathers of
21 their parental rights and duties with regard to the child;

22 (3) Notify the court if all reasonable attempts to both
23 identify and notify the biological father or possible biological
24 fathers are unsuccessful; and

25 (4) Determine, by deposition, by affidavit, by interview,

1 or through testimony at a hearing, the following: Whether the
2 mother was married at the time of conception of the child or at
3 any time thereafter, whether the mother was cohabitating with a
4 man at the time of conception or birth of the child, whether the
5 mother has received support payments or promises of support with
6 respect to the child or in connection with her pregnancy, whether
7 conception was the result of sexual assault or incest, and whether
8 any man has formally or informally acknowledged or declared his
9 possible paternity of the child.

10 Sec. 7. Section 43-111, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 43-111 Except as provided in section 43-101, 43-106.01,
13 and the Nebraska Indian Child Welfare Act, after a decree of
14 adoption has been entered, the natural parents of the adopted
15 child shall be relieved of all parental duties toward and
16 all responsibilities for such child and have no rights over
17 such adopted child or to his or her property by descent and
18 distribution.

19 Sec. 8. Original sections 43-101, 43-104.08, 43-104.13,
20 43-104.15, 43-104.18, 43-104.19, and 43-111, Reissue Revised
21 Statutes of Nebraska, are repealed.